

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RENE DELIVA-PALACIOS,
BOP #03562-298

Plaintiff,

vs.

UNKNOWN NATIONAL CITY POLICE
OFFICERS, et al.,
Defendants.

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 07-~~2115~~ JAH(CAB) DEPUTY

Magistrate Judge Bencivengo

MOTION FOR RECONSIDERATION OR
IN THE ALTERNATIVE APPEAL NOTICE

NOW COMES the Plaintiff, Rene Deliva-Palacios, through himself, and respectfully moves this Honorable Court, pursuant to the Due Process Clause of the Fifth Amendment to the United States Constitution, for an order finding that sufficient evidence exist for a reconsideration of the November 6, 2007 judgement made by the Honorable John A. Houston. In support of this motion the Plaintiff shows the Court the following:

1. Petitioner invokes Haines v. Kerner, 92 S.Ct. 594, 404 US 519(US Jan. 13, 1972), respectfully requesting this Honorable Court to hold the foregoing motion to less stringent standards than a formal pleading drafted by a lawyer, based on plaintiff's pro se status.
2. Plaintiff received the Courts Order of November 6, 2007, by the Honorable John A. Houston on tuesday, November 13, 2007, via the regular inmate mail-call procedure.
3. On or about August 2007, the Plaintiff incorrectly filed a 2241 (Civil Case No. 07-1109LAB(NLS) against Unknown Named Officers, et al. This was the incorrect vehicle to bring against the National

City Police Department, because a 2241 must be filed with the Warden of the institution where one is incarcerated at-as the defendant. Furthermore it a 2241 must be filed when an inmate has exhausted his Administrative Remedies, per the PLRA.

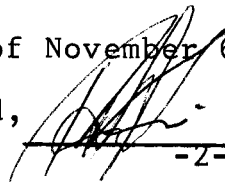
Plaintiff in this case had no complaints with the Warden or the institution where he filed the 2241, but was seeking relief from the brutal assault which he suffered at the hands of a National City Police Department police dog.

4. On or about September 2007, this Honorable Court **dismissed without prejudice** Case No. 07-2115JAH(CAB), so that the plaintiff could file his motion to proceed in forma pauperis and to re-file if necessary.

5. Plaintiff is verifiably indigent and diligently proceeded to comply with the Court's directives. In October 2007, the plaintiff properly filed a §1983 Civil Complaint against the National City Police Department. This § 1983 Civil Complaint was accompanied by a Motion(with Affidavit) To Proceed In Forma Pauperis, also accompanied with a verifiable inmate account print-out, showing plaintiff to be indigent.

6. For the foregoing reasons, the Plaintiff, Rene Deliva-Palacios, respectfully request this Honorable Court to reconsider its November 6, 2007 Order- Dismissing as frivolous, plaintiff's § 1983 Civil Action. In the name of justice and pursuant to the due procees clause of the fifth amendment plaintiff files this motion in good faith. In the alternative, plaintiff seeks an appeal of the court's order of November 6, 2007. So He Pray.

Respectfully Submitted,

 11-15-07
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"EXHIBIT-A"
(1 of 1)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RENE DE LIVA PALACIOS,
Petitioner,
v.
PAULA M. JARNECKE, Warden,
Respondent.

Civil No. 07-0904 JH (LSP)

ORDER:

**(1) DENYING REQUEST TO PROCEED
IN FORMA PAUPERIS; and**

**(2) DISMISSING PETITION WITHOUT
PREJUDICE AND WITH LEAVE TO
AMEND**

On May 18, 2007, Petitioner, proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

REQUEST TO PROCEED IN FORMA PAUPERIS

The request to proceed in forma pauperis is **DENIED** because Petitioner has failed to provide the Court with sufficient information to determine Petitioner's financial status. A request to proceed in forma pauperis made by a state prisoner must include a certificate from the warden or other appropriate officer showing the amount of money or securities Petitioner has on account in the institution. Rule 3(a)(2), 28 U.S.C. foll. § 2254; Local Rule 3.2. Petitioner has failed to provide the Court with the required Prison Certificate.

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